XI-HC-78

(22) A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1639/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT . Ringa alias Rainga, son of Jageshwar Sidar, aged 32 years, occupation cultivation, resident of Nagarmuda, Thana Tamnar, Distt. Raigarh (MP)

Versus

RESPONDENT State of Madhya Pradesh, through the District Magistrate, Raigarh (MP)

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13-3-2007

Shri Awadh Tripathi, Advocate for the appellant.

Shri M.P.S. Bhatia, Panel Lawyer for the respondent/State.

Heard on I.A. No. 442/2007 for early final hearing of the appeal.

With the consent of the counsel for the parties, the appeal is heard finally.

I.A. No. 442/2007 stands disposed of.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 27-5-2000 passed by 2nd Additional Sessions Judge, Raigarh in S.T. No. 142/1998, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo two months' R.I.

2. Case of the prosecution, in brief, is that at about 11.00 to 11.30 in the night of 17-6-1998, when Jageshwar (since deceased) and his wife Sonarobai

P.T.O.

मामला क्रमांक Cr.A.No.1639/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were sleeping, Phoolsingh, Indrajeet and Dhaneshwar were talking, the accused Ringa alias Rainga came in a drunken condition and started quarreling with his wife Dewmati (P.W. 12) and beating her, on which P.W. 1 Phoolsingh, P.W. 5 Indrajeet, P.W. 4 Dhaneshwar, P.W. 7 Maliphulo and Jageshwar (since deceased) intervened and asked the accused-appellant not to quarrel. The deceased asked his son- the accused-appellant that why he is not going for sleep after taking dinner as he has come after consuming liquor, on which the accused asked his father – who are you to say so, he rushed towards his father to attack him. When PW 1 Phoolsingh intervened, the accused torn his Lungi and underwear, he became naked, therefore, he went to his room for putting on his clothes. In the meantime, accused Ringa picked up a carpenter axe and attacked his father Jageshwar on his head. When accused again tried to attack, Phoolsingh snatched the carpenter axe and the accused-appellant went to the house of one Panakram. As a result of the injury sustained, Jageshwar fell down, blood started oozing out of the head injury, after some time, he succumbed to the injuries. The matter was reported by P.W. 1 Phoolsingh in Police Station Tamnar under merg intimation Ex. P-1, based on that, Station House Office, Police Station Tamnar registered F.I.R. Ex. P-2, left for the place of occurrence, after giving notice Ex. P-6 to the Panchas, he prepared inquest Ex. P-7 on the body of Jageshwar. The carpenter axe, the torn clothes of Phoolsingh were seized under Ex. P-3, the blood stained towel was seized under Ex. P-12, plain soil and blood stained soil was seized from the place of occurrence under Ex. P-13, site plan Ex. P-11 was prepared. Body of Jageshwar was sent for post mortem examination under Ex. P-9 to the Primary Health Centre, Tamnar where P.W. 9 Dr. B.S. Badhai conducted post mortem and prepared the report Ex. P-9. He opined that the cause of death was shock as a result of excessive bleeding and cardio respiratory arrest, the death was homicidal

मामला क्रमांक Cr.A-No. 1639/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in nature. Even carpenter axe was sent to the Doctor for examination and after examination; he gave report Ex. P-10 and opined that it was possible to cause injury with the carpenter axe which was found on the head of the deceased. The seized articles were sent to the Forensic Science Laboratory, Raipur from where report Ex. P-18 was received. After completion of the investigation, charge sheet was filed in the court of Judicial Magistrate First Class, Gharghoda who in turn, committed the case to the Sessions Judge, Raigarh from where learned Additional Sessions Judge received the case on transfer for trial.

3. The prosecution examined 14 witnesses in order to establish the charge against the accused-appellant. Statement of the accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him and stated that he has been falsely implicated by his family members in the crime in question and he is innocent.

4. Learned Additional Sessions Judge after hearing the counsel for the respective parties and perusal of the record, convicted and sentenced the accused as aforementioned.

5. We have heard Shri Tripathi on behalf of the accused-appellant and Shri Bhatia on behalf of the State.

6. Shri Tripathi has not disputed the homicidal death of Jageshwar. More over, the eye-witness namely P.W. 1 Phoolsingh-brother of the accused and son of the deceased and P.W. 3 Sonarobai- mother of the accused and wife of the deceased have categorically stated that the accused-appellant attacked Jageshwar with the carpenter axe. P.W. 9 Dr. B.S. Badhai who conducted post mortem on the body of Jageshwar has stated that there was an incised wound on the right parietal region in the size of 3cm x 2 cm x 1cm, brain membrane was visible through the injury, there was another injury on the right shoulder of the deceased.

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr A No. 1639/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

He further opinioned that cause of the death was excessive hemorrhage and shock. Injury found on the head of the deceased was sufficient in ordinary course of nature to cause death. His report is Ex. P-9. Therefore, in view of the above ocular and medical evidence, it is established that death of Jageshwar was homicidal in nature.

7. As far as involvement of the accused-appellant in the crime in question is concerned, that has also not been disputed by the learned counsel for the accused-appellant. More- over, from the evidence of P.W. 1, Phoolsing-brother of the accused and son of the deceased and P.W. 3 Sonarobai- mother of the accused and wife of the deceased, it is established that the accused-appellant was author of the crime in question and the finding of the trial court is based on legal clinching evidence.

8. Shri Tripathi argued that there was no previous animosity between the deceased and the accused-appellant. When accused-appellant and his wife were quarreling, at that time, the deceased came, intervened and asked the accused-appellant as to why he is not going for sleep which infuriated the accused and without any intention to cause death of his father, all of a sudden, the accused-appellant picked up a carpenter axe and attacked his father on his head once only, therefore, nothing can be attributed to the accused-appellant that he had intention to cause death of his father, therefore, the offence does not travel beyond Section 304 – II of I.P.C. He placed reliance on the judgment of Apex Court in the case of ***Salim Sahab –v- State of M.P.*** reported in (2007) 1 SCC (Cri) 425.

9. On the other hand, Shri Bhatia supported the judgment of the trial Court.

10. So far as legal position regarding the nature of the offence whether the act of the accused comes within the definition of murder or culpable homicide not amounting to murder is concerned, in the celebrated judgment of ***Virsa Singh –v-***

P.T.O.

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

State of Punjab reported in ***AIR 1958 SC 465***, Justice Vivian Bose, J. held that clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause "thirdly" of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted. Therefore, if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

11. In the matter of ***Thangaiya -v- State of Tamil Nadu*** reported in ***2005 Cri. L.J. 684***, the Apex Court held that in order to ascertain the intention of the accused, weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given, are some of the factors to be considered.

12. In the light of the above principle laid down by the Apex Court in deciding the nature of the offence, facts of the present case are that in the fateful night of 17-6-1998, when the deceased and his family members were at their residence, accused who is son of the deceased, came in a drunken condition, started quarrelling with his wife Devmati (PW 12), rushed towards her carrying club in his hand to assault, the deceased Jageshwar being father of the accused and head of the family asked the accused not to attack his wife. Accused rushed to assault

मामला क्रमांक Cr.A. No. 1639/2000 ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Jageshwar. When Phoolsingh tried to intervene, he torn his clothes, as a result of which he became naked and left the place. The accused picked up a carpenter axe and assaulted the deceased with the carpenter axe, as a result of which, Jageshwar fell down and died spontaneously. These facts show that when the accused was quarrelling with his wife, he rushed towards her to attack her with club, father of the accused (since deceased) asked him not to do so, without giving second though to his action, the accused attacked his father with carpenter axe and that too on his head. As per doctor's evidence, the place where the injury was inflicted with the carpenter axe from the sharp aged side was on right parietal region and the blow was so fatal that the brain membrane became visible through the wound inflicted by the accused-appellant and Jageshwar died spontaneously. On the above facts, it cannot be held that there was any sudden quarrel between the deceased and the accused. Jageshwar- father of the accused (since deceased) simply asked him not to quarrel, which cannot be said to be a quarrel by the deceased with the accused. More over, that was not a ground to become angry with his father so as to reach to the extent to attack him, that too with deadly weapon like carpenter axe on vital part of the body i.e. head. The Doctor in his evidence has categorically stated that the injury inflicted on the right parietal region of the deceased was inflicted by the carpenter axe which was brought before him for examination and as a result of which membrane was visible through the injury and the same was sufficient in the ordinary course of nature to cause death. Sufficiency to cause death can be held because the deceased died spontaneously on the spot. Therefore, the intention of the accused-appellant to cause death of Jageshwar was writ large for the reason that (a) in the first place he attacked with carpenter axe, the deadly weapon; (2) the assault was made on vital part of the body i.e. right parietal region of the deceased and (3) the assault was

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

made with such a force that resulted into exposure of the brain membrane through the hole of injury. For the above reasons, we are of the considered opinion that it was a clear cut case of murder because when the accused attacked his father with carpenter axe- deadly weapon, on his parietal region, he had the intention to cause injury which was sufficient in the ordinary course of nature to cause death and the case does not fall under Section 304-II, IPC.

13. As far as the judgment of the Apex Court in ***Salim Sahab.*** (Supra) on which learned counsel for the accused-appellant placed reliance is concerned, it is distinguishable on fact because in that case when the accused and his father-in-law were quarrelling, the deceased intervened which was objected by the accused and started grappling with him. While grappling with the deceased Saleem, the accused took out a pair of scissors, with which he assaulted the deceased in his abdomen and chest with the result that the deceased fell down unconscious, the Court held that the scissors was not a big sized weapon and in the sudden quarrel, the accused assaulted the deceased. Whereas in the present case, there was no quarrel between the deceased and the accused. There was no grappling between them. The deceased-father of the accused simply asked the accused not to quarrel, and only on that, the accused attacked the deceased on his head, therefore, this case is of no help to the accused-appellant.

14. In the result, we do not find any merit in this appeal. The learned trial Judge has not committed any illegality or infirmity by convicting and sentencing the accused-appellant under Section 302 of I.P.C., as such, the appeal is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.